

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PERCY PEREZ,

Plaintiff,

21cv0332

ELECTRONICALLY FILED

v.

SCI FAYETTE SUPER. M. CAPOZZA  
(*JOHN DOE*), et al.,

Defendant.

**Order on Motion to Dismiss [34]**

Pending before this Court is the Motion to Dismiss of Defendants [34] and Report and Recommendation of the Honorable Lisa Pupo Lenihan [45], recommending that the Motion to Dismiss be granted in part and denied in part. Objections were due by 1/31/22, and no objections have been filed.

The Court hereby AFFIRMS the Report and Recommendation [45] and ADOPTS it as the Opinion of Court. Therefore, Defendants' Motion to Dismiss is hereby GRANTED as to all official capacity claims against all Defendants, and as to the individual capacity claim against Defendant Capozza. Defendants' Motion is also GRANTED as to any independent Fourteenth Amendment claim against any Defendant.

The Motion is HEREBY DENIED as to the individual capacity claims against Defendants Barnacle and Rhodes, and therefore, the supervisory liability claims against them

remain. The Eighth Amendment claims for excessive force against Defendants McIntyre and Meese remain, as Defendants did not move on these claims.

**SO ORDERED** this 3rd day of March, 2022.

s/Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc:

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